

MEMORANDUM OF LAW

DATE: August 2, 1988

TO: Captain C. D. Crow, Northern Division via
Deputy Chief Davis and Commander Kennedy

FROM: City Attorney

SUBJECT: Jurisdiction in Pacific Ocean Areas

You asked via memorandum a series of questions concerning investigation of boating accidents which occur in the waters off the shoreline of The City of San Diego. Your questions principally concerned jurisdiction and liability. This memorandum will discuss the applicable law answering your questions seriatim.

The United States Constitution extends federal judicial power to all cases of admiralty and maritime jurisdiction. U.S. Const. art. II, § 2, cl. 1. The Admiralty Jurisdiction Extension Act (46 U.S.C.S. Appx. § 740 (1987)) further extends the admiralty and maritime jurisdiction of the United States to include all cases of damage or injury to person or property by a vessel on navigable water, including injuries caused by a vessel to persons or property on the land. "Vessel" is defined to include every description of watercraft or other artificial contrivance used, or capable of being used as a means of transportation on the water. 1 U.S.C.S. § 3 (1980). See, *United States v. Holmes*, 104 F.2d 884 (C.C. Ohio 1900) (sailing yacht); *Spiller v. Thomas M. Lowe Jr. & Associates, Inc.*, 328 F. Supp. 54 (W.D. Ark. 1971), *aff'd*, 466 F.2d 903 (8th Cir. 1972) (16 foot aluminum boat).

Federal admiralty jurisdiction extends at all times to the mean high water mark in tidal areas, but may further extend to all public navigable lakes and rivers if those waters are presently being used or are susceptible of being used as arteries of commerce. See, *Adams v. Montana Power Co.*, 528 F.2d 437 (9th Cir. 1975); *Hassinger v. Tideland Electric Membership Corp.*, 781 F.2d 1022 (4th Cir. 1986). Hence, admiralty jurisdiction over a tort claim arising from a collision between two boats is contingent, not upon the type of vessels involved or the type of activity, but rather, upon the nature of the place where the

accident occurred. *St. Hilaire Moye v. Henderson*, 496 F.2d 973, cert. den. 419 U.S. 884, 42 L.Ed.2d 125, 95 S.Ct. 151 (8th Cir. 1974).

The states still do retain a great deal of power over the navigable waters within their territorial limits and state courts

have concurrent jurisdiction over tort claims arising from collisions which occur on these waters. *Wisconsin v. Duluth*, 96 U.S. 379, 24 L.Ed. 668 (1878). The jurisdiction of the State of California extends oceanward three nautical miles from the lowest low water mark on the shore, adjacent rocks and islands, and headland to headland lines across bays. Calif. Const. art 3, . 2; Government Code . 170. The municipal jurisdiction of The City of San Diego extends into the Pacific Ocean to the extent of one marine league. San Diego City Charter, . 3. A marine league is equivalent to three geographical or sea miles. *Cunard S.S. Co., v. Mellon*, 262 U.S. 100, 122 (1922); *Rockland, Mt. D. & S.S. Co. v. Fessenden*, 79 Me. 140, 8 A. 550 (1887). However, wherever Congress acts to exercise federal control over some aspect of regulating navigable waters, the state's power is preempted in that area. *Wisconsin v. Duluth*, 96 U.S. 379 (1878). Moreover, once Congress has spoken in that area, federal authority reigns supreme and may not be interfered with by the laws of the states. *New York ex rel. Cornell Steamboat Co. v. Sohmer*, 235 U.S. 549, 59 L. Ed. 355, 35 S. Ct. 162 (1914).

Broad federal control over the three-mile marginal belt has been specifically addressed by the Supreme Court. In *United States v. California*, 332 U.S. 19 (1946), the Court said:

Not only has acquisition, as it were, of the three-mile belt, been accomplished by the national Government, but protection and control of it has been and is a function of national external sovereignty. (Citations.) The belief that local interests are so predominant as constitutionally to require state dominion over lands under its land-locked navigable waters finds some argument for its support. But such can hardly be said in favor of state control over any part of the ocean or the ocean's bottom. . . . The country's adoption of the three-mile belt is by no means incompatible with its traditional insistence upon freedom of the sea, at least so long as the national Government's power to exercise control consistently with whatever international undertakings or commitments it may see fit to

assume in the national interest is unencumbered. . . . (Citations.) But whatever any nation does in the open sea,

which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units.

(At 34-35.)

Congress has acted to establish control over the matters which are of concern to you. The federal authority is codified at 14 U.S.C.S. section 2 (1978) which delineates the primary duties of the Coast Guard. Among other things, the statute requires the Coast Guard to promulgate and enforce regulations for the promotion of safety of life and property on all waters subject to the jurisdiction of the United States. Moreover, the Coast Guard must develop, establish, maintain and operate rescue facilities for the promotion of safety on these waters. To carry out these duties the Coast Guard is empowered to make inquiries, examinations, inspections, searches and arrests for the prevention, detection and suppression of violations of laws of the United States. 14 U.S.C.S. . 89 (1978).

With respect to maritime collisions, the federal statutory scheme is complete. The Secretary of Transportation has statutory authority to prescribe regulations on marine casualty reporting (46 U.S.C.S. . 6101 (1987)) including a uniform state reporting system (46 U.S.C.S. . 6102 (1987)), and also the investigation of marine casualties (46 U.S.C.S. . 6301 (1987)). The regulations are published as 46 Code of Federal Regulations Part 4. Most of the investigatory authority is based on the Coast Guard's responsibility for administering various marine licensing regulations and investigations are frequently focused on competence, sobriety, etc., of vessel masters.

The state reporting system includes section 656 of the Harbors and Navigations Code, and title 14, art. 3, sections 6501-6505 of the California Code of Regulations. Section 656 provides that the Department of Boating and Waterways shall adopt casualty and accident reporting regulations in conformity with those promulgated by the Coast Guard. The section also provides that a peace officer or harbor police officer, upon receipt of such report, shall forward it to the department. The regulatory sections impose a reporting requirement for recreation vessels subject to registration under section 9850 of the Vehicle Code. The regulations require the operator of such a vessel involved in

an occurrence within waters subject to the jurisdiction of the State of California or on the high seas if the last port of call was within California, to submit specified reports when the

occurrence results in death, injury or property damage over \$200.

As noted above, the powers of the Coast Guard are quite plenary and the responsibilities of that agency are wide ranging. Notwithstanding San Diego City Charter section 3, which provides for the City to ". . . prepare and adopt such rules and regulations as it may deem necessary for the regulation, use and government of the water system of the City. . .," the subject of maritime collisions has been fully preempted by the federal government. Accordingly, there is no authority which requires either the Police Harbor Patrol Unit or the Lifeguard Patrol Unit to investigate boat collisions.

Apart from the jurisdictional problems detailed above, the Jones Act (46 U.S.C.S. Appx. . 688 (1987)) provides another basis for restraint in offshore activity by the Harbor Patrol Unit. This federal statute creates a cause of action by an employee against an employer where the employee may be able to recover compensation for injuries or death resulting from an accident that occurred in the course and scope of his employment as a seaman on navigable waters. For purposes of the Jones Act, a "seaman" is anyone permanently assigned to or doing a substantial part of his work on a vessel and whose duties contribute to the function of the vessel or to the accomplishment of its mission. *Offshore Company v. Robison*, 266 F.2d 769, 779 (1959). A vessel owned by a municipality is subject to the provisions of the Jones Act. *Jacob v. New York City*, 315 U.S. 752 (1942). With the assumption that response to boating accidents outside the Mission Bay breakwater involves greater risk of injury than regular patrol activities on Mission Bay, the City would have an increased exposure to liability and this risk is not justifiable on the basis of any statutory duty.

I hope I have adequately addressed your concerns on this matter.

JOHN W. WITT, City Attorney

By

Grant Richard Telfer

Deputy City Attorney

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